

BEFORE THE POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

BEN SCHROETER,	)	
	)	
Appellant,	)	PCHB No. 91-159
	)	
v.	)	ORDER OF DISMISSAL
	)	
STATE OF WASHINGTON,	)	
DEPARTMENT OF ECOLOGY;	)	
and THURSTON COUNTY,	)	
	)	
Respondents.	)	

On June 26, 1991, Appellant, Ben Schroeter, filed a Notice of Appeal with the Pollution Control Hearings Board. On July 1, 1991, the Board held an emergency stay hearing regarding the appeal. Respondent, Department of Ecology, moved that the appeal be dismissed on the grounds that it was not timely filed.

The Board considered the following materials in ruling on Ecology's Motion to Dismiss:

1. Respondent, Department of Ecology's Memorandum in Opposition to Appellant's Motion for Stay, and;

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1 FINDINGS OF FACT

2 I.

3 The parties have stipulated that the only Order before  
4 the Board is Ecology Order No. DE 91-065. Order No. DE 91-065  
5 was served on the Thurston County Public Works Department on  
6 May 3, 1991. There is no evidence that Appellant ever  
7 requested that Ecology provide Appellant with a copy of this  
8 Order. Appellant secured a copy of Order No. DE 91-091 on  
9 June 25, 1991.

10 II.

11 The time period from June 25, 1991 to June 26, 1991, is  
12 less than thirty (30) days. The time period from May 3, 1991  
13 to June 26, 1991, is in excess of thirty (30) days.

14 III.

15 Any Conclusions of Law which should be deemed a Finding  
16 of Fact is hereby adopted as such.

17 From these Findings of Fact, the Pollution Control  
18 Hearings Board comes to these:

19 CONCLUSIONS OF LAW

20 I.

21 The Pollution Control Hearings Board lacks jurisdiction  
22 to hear Appellant's appeal because the appeal was not timely  
23 filed. RCW 43.21(B).310(1) provides that appeals must be  
24 ". . . filed with the board and served on the department or  
25 authority within thirty days after receipt of the order."

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II.

Appellant has argued that the phrase "receipt of the order" means receipt by any party who wishes to appeal the Order. Respondents have argued that the phrase "receipt of the order" means the receipt of the Order by the party to whom the Order is directed or receipt of the Order by parties who have requested copies of the Order from Ecology as "interested parties." We adopt the <sup>view of</sup> ~~argument~~ <sup>of</sup> the Respondents, ~~and hold~~ <sup>that</sup> ~~that to be timely under RCW 43.21(B).310, an appeal must be filed within thirty (30) days from the date the appealed Order or decision of the Department of Ecology is served on the party to whom the Order or decision is directed.~~

~~We find that there must be clarity regarding the Board's jurisdiction. RCW 43.21(B).310(1) provides clarity by requiring that appeals be filed within thirty (30) days of the receipt of the Order appealed from. If Appellant's argument were adopted, there would be no clarity regarding the Board's jurisdiction, because any party could appeal an Ecology Order within thirty (30) days after securing a copy of the Order. Such a result would lead to an indefinite number of private limitation periods depending upon when a party secured a copy of the Order appealed from. We do not believe the Legislature intended this level of uncertainty with respect to the Board's jurisdiction.~~ <sup>finality</sup> <sup>Orders and the period for appeal</sup>

1 III.

2 We distinguish our prior holding In the Matter of  
3 University District Community Council; University Park  
4 Community Club; and CARHT v. Puget Sound Air Pollution Control  
5 Agency and SAFECO Insurance Company of America, PCHB Nos. 783,  
6 783-A, 783-B (February 4, 1976), which involved the appeal of  
7 an Order issued by PSAPCA to SAFECO. In University District  
8 Community Council, the issuing agency in that case, PSAPCA,  
9 mailed a copy of its Order to Appellants following Appellant's  
10 participation regarding the appealed Order through numerous  
11 comments and submittals directed to PSAPCA. Appellants  
12 received the Order one (1) day after PSAPCA had served the  
13 Order on SAFECO. Appellants appealed PSAPCA's Order within  
14 thirty (30) days of their receipt of the Order mailed to them  
15 by PSAPCA. In this case, there is no evidence that Appellant  
16 participated in any way in the issuance of Order No.  
17 DE 91-091. Therefore, there was no way for Ecology to know  
18 that Appellant would potentially be an aggrieved person  
19 pursuant to WAC 371-08-005(2)(b). ~~As such, Ecology was not~~ JB  
20 ~~required to mail a copy of its final decision to Appellant.~~ M.

21 NOW THEREFORE, based on the foregoing, the Board decides

22 ///

23 ///

24 ///

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1 that it lacks jurisdiction to entertain the instant appeal.  
2 Accordingly, PCHB 91-159 is **HEREBY DISMISSED**.


3 DONE this 1st day of July, 1991.

4   
5 JUDITH A. BENDOR, CHAIR Member

6  
7 HAROLD S. ZIMMERMAN, MEMBER


8   
9 ANNETTE S. MCGEE, MEMBER

10 Presented By:


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Thurston County

22   
23 BEN SCHROETER  
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